

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

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TERRANCE HAZEL,

Case No. 3:20-cv-00428-LRH-CLB

Petitioner, ORDER

v.

RUSSEL, et al.,

Respondents.

On August 19, 2020, this court dismissed Terrance Hazel's *pro se* habeas corpus petition for failure to state a claim for which habeas corpus relief may be granted (ECF No. 3). Judgment was entered (ECF No. 4). Almost three months after this case was closed, Hazel has filed a motion for reconsideration and what he has styled as an emergency motion for a virtual hearing (ECF Nos. 5, 6). As discussed below, the motions are denied.

Rule 60(b) entitles the moving party to relief from judgment on several grounds, including the catch-all category "any other reason justifying relief from the operation of the judgment." Fed.R.Civ.P. 60(b)(6). A motion under subsections (b)(4-6) must be brought "within a reasonable time." Fed.R.Civ.P. 60(c)(1). Relief under subsection (b)(6) requires a showing of "extraordinary circumstances." *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005).

Inmates in state custody pursuant to a state-court judgment who challenge their judgment of conviction or sentence on federal constitutional grounds may pursue a

1 U.S.C. § 2254 petition for writ of federal habeas corpus. Further, “relief is available to a  
 2 prisoner under the federal habeas statute only if success on the claim would  
 3 ‘necessarily spell speedier release’ from custody.” *Nettles v. Grounds*, 788 F.3d 992,  
 4 1001 (9<sup>th</sup> Cir. 2015); 28 U.S.C. § 2254.

5 In his petition, Hazel claims that Northern Nevada Correctional Center personnel  
 6 are not complying with COVID-19 pandemic safety protocols in deliberate indifference  
 7 to serious medical and safety needs (ECF No. 1, pp. 3-4). As the court stated in its  
 8 order dismissing the petition, such a claim implicates petitioner’s Eighth Amendment  
 9 rights under 28 U.S.C. § 1983, not habeas corpus. He also seeks to assert a claim  
 10 under the Americans with Disabilities Act. *Id.* at 7-8.

11 In his motion for reconsideration Hazel urges—correctly—that rates of COVID-19  
 12 infection in Nevada prisons and jails continue to rise precipitously.<sup>1</sup> He argues that he  
 13 is particularly vulnerable to falling seriously ill if he contracts COVID-19 due to his age,  
 14 race, and mental and physical disabilities. Without question it is critical that NDOC  
 15 institutions comply with their stated COVID-19 safety protocols. However, as this court  
 16 has stated in other cases, in this district, Hazel must file a civil rights complaint if he  
 17 wishes to pursue these claims.<sup>2</sup>

18 Hazel has not presented a basis for the court to grant Rule 60(b) relief.  
 19 Accordingly, the motion for reconsideration is denied.

20 **IT IS THEREFORE ORDERED** that petitioner’s motion for reconsideration (ECF  
 21 No. 5) and emergency motion for virtual hearing (ECF No. 6) are both **DENIED**.

22 **IT IS FURTHER ORDERED** that a certificate of appealability is denied.


23 **IT IS FURTHER ORDERED** that the Clerk send to petitioner one copy each of  
 24 the prisoner application to proceed *in forma pauperis* and 42 U.S.C. § 1983 complaint  
 25 form and instructions, along with the papers he filed in this action.

26  
 27 <sup>1</sup>See, e.g., <https://thenevadaindependent.com/article/with-nevada-prison-covid-19-cases-quadrupling-in-two-weeks-families-call-for-early-releases>.

28 <sup>2</sup> See, e.g., *Carranza et al. v. Koehn*, 2:20-cv-01586 (ECF No. 24). If the situation warrants, Hazel can file an emergency motion for relief in a § 1983 civil rights action.

1           **IT IS FURTHER ORDERED** that the Clerk resend to petitioner one copy of this  
2 court's order dated August 19, 2020 at ECF No. 3.

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4           DATED this 9th day of December, 2020.

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8           LARRY R. HICKS  
9           UNITED STATES DISTRICT JUDGE  
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